

IN THE MATTER OF
SHEILA SCHAFFER, P.T.

Respondent

License No.: 16039

*** BEFORE THE STATE BOARD**
*** OF PHYSICAL THERAPY**
*** EXAMINERS**

*** Case No.: 01-BP-142**

* * * * *
*

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board"), and subject to Md. Health Occ. Code Ann. § 13-101 *et seq.* (the "Act"), the Board charged Sheila Schaffer, P.T., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of H.O. § 13-316:

Subject to the hearing provisions of § 13-317 of this subtitle, the Board may deny a license, temporary license, or restricted license to any applicant, reprimand any licensee or holder of a temporary license or restricted license, place any licensee or holder of a temporary license or restricted license on probation, or suspend or revoke a license, temporary license, or restricted license if the applicant, licensee or holder:

- (5) In the case of an individual who is authorized to practice physical therapy is grossly negligent;
 - (ii) In the direction of an individual who is authorized to practice limited physical therapy;
- (15) Submits a false statement to collect a fee;
- (16) Violates any provision of this title or rule or regulation adopted by the Board;
- (21) Grossly overutilizes health care services;

- (26) Fails to meet accepted standards in delivering physical therapy care.

The Board further charged the Respondent with the following violations of the Code of Maryland Regulations (Code Md. Regs.) tit. 10, § 38.03.02 Standards:

- K. The physical therapist shall provide direction, periodic on-site supervision, and instruction for the physical therapy assistant that is adequate to ensure the safety and welfare of the patient;
- L. At least once in every ten visits or every 60 calendar days, whichever comes first, there shall be a joint on-site visit with treatment rendered by the physical therapist assistant under the direct supervision of the physical therapist. At this visit, the physical therapist is to assess the treatment performed by the physical therapist assistant, reevaluate the patient's program, and document the program.

The Board also charged the Respondent with violations of the Code Md. Regs. tit. 10, § 38.03.02-1 Requirements for Documentation:

A. As established by the American Physical Therapy Association of Maryland, and as approved by the Board, the physical therapist shall document the patient's chart as follows:

- (1) For initial visit:
 - (a) Date,
 - (b) Condition/diagnosis for which physical therapy is being rendered,
 - (c) Onset,
 - (d) History, if not previously recorded,
 - (e) Evaluation and results of tests (measurable and objective data),
 - (f) Interpretation,
 - (g) Goals,
 - (h) Plan of care and
 - (i) Signature, title (PT) and license number;
- (2) For subsequent visits:

- (a) Date,
- (b) Modalities, procedures, etc.,
- (c) Cancellations, no-shows,
- (d) Response to treatment,
- (e) Signature and title (PT), with identifying signatures appearing on the patient's chart, although the flow chart may be initialed,
- (f) Weekly progress or lack of it,
- (g) Unusual incident/unusual response,
- (h) Change in plan of care;
- (i) Temporary discontinuation or interruption of services and reasons,
- (j) Reevaluation,
- (k) If there is a physical therapy assistant, reevaluate and document as required by Regulation .02L of this chapter;

(3) For discharge or last visit:

- (a) Date,
- (b) Reason for discharge,
- (c) Status for discharge,
- (d) Recommendations for follow-up, and
- (e) Signature and title.

The Board issued the charges on January 21, 2003. Thereafter, a Case Resolution Conference was held on April 2, 2003. Following the Case Resolution Conference, the parties agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

The Board makes the following findings:

1. The Respondent is licensed to practice physical therapy in the State of Maryland. The Respondent was originally licensed on November 28, 1986.

2. At all times relevant hereto, the Respondent was employed as a physical therapist by Concentra Medical Centers, Inc. ("Concentra").

3. On or about March 11, 1999, the Board received a complaint from the Special Investigation Unit of the Injured Workers' Insurance Fund ("IWIF") that Concentra overutilized the following PT procedures, as identified by the Current Procedural Terminology ("CPT") assigned to them:

95831- muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report

95851- range of motion measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine)

4. Thereafter, the Board conducted an investigation of services provided and claims submitted to IWIF by Physical Therapists ("PTs") and Physical Therapist Assistants ("PTAs") employed by Concentra at the time the complaint was filed. The investigation revealed documentation and coding deficiencies in addition to those originally alleged in the IWIF complaint.

CPT CODES

5. CPT codes provide a uniform language that accurately describes medical, surgical and diagnostic procedures. According to the CPT Manual, the CPT is "the most widely accepted nomenclature for the reporting of physician procedures and service under government and private health insurance programs. CPT is also useful for administrative management purposes such as claims processing and for the development of guidelines for medical care review."

a. Codes 95831 and 95851

6. The CPT codes identified in the IWIF complaint, 95831 and 95851, are classified as Neurology and Neuromuscular Procedures.¹ Both codes are appropriate to evaluate a patient who has suffered deficiencies as a result of a neurological disorder or disease such as stroke, multiple sclerosis and ALD in order to document the patient's progression or regression. Both of these codes require the physical therapist to generate a separate report.

7. The term "separate procedure," as used in the description of the codes in the CPT manual, identifies a procedure that is commonly carried out as an integral component of a total service or procedure. The CPT manual states further:

The codes designated as "separate procedure" should not be reported in addition to the code for the total procedure or service of which it is considered an integral component. However, when a procedure or service that is designated as a "separate procedure" is carried out independently or considered to be unrelated or distinct from other procedures/services provided at that time, it may be reported by itself, or in addition to other procedures/services by appending the modifier "-59" to the specific "separate procedure" code to indicate that the procedure is not considered to be a component of another procedure, but is a distinct, independent procedure. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries).

8. Code 95831 is defined in the CPT manual as follows: Muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report.

¹ The most common CPT codes recorded in Concentra patient records are listed in the Physical Medicine and Rehabilitation section, the first two digits are "97." Unless a four-digit CPT code suffix is specified, the suffix for all codes used herein is "0000."

9. Code 95851 is defined in the CPT manual as follows: Range of motion ("ROM") measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine).

10. Objective findings such as muscle strength and range of motion are a standard of physical therapy documentation and are to be performed once a week at a minimum. It is not standard physical therapy practice to bill separately for these measurements except when being performed as re-evaluation. It is standard physical therapy practice to assess and interpret objective findings that result from muscle testing and range of motion testing in order to determine whether changes should be made to the patient's treatment plan and/or goals.

b. Code 97110-Therapeutic exercise

11. Therapeutic exercise (CPT code 97110) is classified as a therapeutic procedure. A therapeutic procedure is "a manner of effecting change through the application of clinical skills and/or services that attempt to improve function. Physician or therapist required to have direct (one on one) patient contact."

12. Therapeutic exercise is defined in the CPT manual as follows: Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercise to develop strength and endurance, range of motion and flexibility.

13. Instructing a patient how to perform the exercise is a component of a therapeutic exercise and is not to be billed as a separate charge by the provider.

c. Code 97112- Neuromuscular re-education

14. Neuromuscular re-education (Code 97112) is classified as a therapeutic procedure and incorporates all of the elements of therapeutic exercises. Neuromuscular re-education is further defined as the neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture and proprioception.

d. Code 97530- Therapeutic activity

15. Therapeutic activity (Code 97530) is classified as a therapeutic procedure and is defined as, "direct (one on one) patient contact by the provider (use of dynamic activities to improve functional performance), each 15 minutes."

General Allegations of Deficiencies

16. Throughout the patients' treatment records, the Respondent noted and billed for therapeutic exercises and therapeutic activities in the absence of documentation that the patients required one-on-one supervision, contact or instruction during these activities.

17. Treatment plans as written in initial evaluations are inadequate in that they lack treatment procedures and/or modalities to be provided.

18. CPT codes are used for tests conducted shortly after a patient's initial evaluation. These tests include: range of motion, manual muscle testing, reflexes, girth and grip strength. Objective findings are a standard of physical therapy documentation and are to be performed on a weekly basis at minimum. It is not standard practice to bill separately for these measurements, except as part of a re-evaluation. The Respondent failed on most occasions to prepare reports

for those procedures that are defined in the CPT manual as a "separate procedure" but billed for the procedure nonetheless.

Patient-Specific Allegations

Patient A

19. Patient A, a female born in 1963, initially presented to Concentra on October 8, 1998, after falling in a work-related incident. Patient A was evaluated by a Concentra physician and referred to physical therapy.

20. The Respondent evaluated and treated Patient A on October 9, 1998 for hand contusions. The Respondent's treatment plan included modalities, therapeutic exercise, therapeutic activities, joint mobilization and massage.

21. The Respondent treated Patient A on October 12, 1998 and noted the following charges: Procedures - Therapeutic Exercise (97110) and Therapeutic Activity (97530); and Tests - Range of Motion (95851) and Jamar 1 (97750)².

22. The Respondent's documentation of the October 12, 1998 visit fails to support charging under the Test codes.

23. The Respondent treated Patient A on October 16, 1998 and also evaluated Patient A's knee. The Respondent noted the following charges: Procedures - Therapeutic Exercise (97110) and Therapeutic Activity (97530) and Tests - Manual Muscle Testing (95831), Range of Motion (95851) and Girth Measurements (97799).

24. The Respondent's documentation failed to support charging under the Test codes.

² Charges under the "Supplies" category are not at issue in this case and are not set forth herein.

Patient B

25. Patient B, a male born in 1956, initially presented to Concentra on October 8, 1999 with a sprained left foot which he sustained in a work-related incident. The Respondent evaluated Patient B and included in the treatment plan daily physical therapy, iontophoresis, bicycle and ankle exercise, including the BAPS board. The Respondent did not conduct a balance assessment during her assessment of the patient.

26. The Respondent treated Patient B on October 11, 1999 and noted the following charges: Modalities - Iontophoresis (97033) and Dexamethasone (99070); Procedures - Therapeutic Exercise (97110), Neuromuscular Re-education (97112) and Therapeutic Activity (97530); and Tests - Girth Measurements (97799).

27. The Respondent's documentation of the October 11, 1999 visit fails to support charging under the Ttest code.

Patient C

28. Patient C, a female born in 1953, initially presented to Concentra on August 28, 1998 complaining of neck and back pain after a work-related motor vehicle accident the previous day.

29. The Respondent evaluated Patient C on August 28, 1998 and included in the treatment plan daily physical therapy, moist heat, electrical stimulation, therapeutic exercise, therapeutic activities, neuromuscular re-education, A[ctivities of] D[aily] L[iving] training, myofascial release and joint

mobilization. The Respondent failed to document loss or disruption of Patient C's ADL skills.

30. Patient C was treated by a PTA over the course of twelve (12) visits from August 31, 1998 through September 24, 1998. On all visits, the PTA's documentation fails to support some or all of the charges that are noted for the visit. Moreover, the PTA performed Range of Motion measurements and billed under Test codes for visits on the following dates: August 31, 1998, September 2, 1998, September 4, 1998, September 8, 1998 (2 units were billed) and September 11, 1998.

31. The Respondent knew, or should have known the permissible activities that fall within the scope of a PTA license. The Respondent, by permitting the PTA to charge under the Test code and to make assessments of the patient's status, violated the Act by knowingly allowing the PTA to practice beyond the scope of the PTA's license.

32. The Respondent next treated Patient C on September 28, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) (2 units), Neuromuscular Re-education (97112) and Therapeutic Activity (97530).

33. The Respondent's documentation fails to support charging for two (2) units of Therapeutic Exercise. In addition, the Respondent failed to document objective findings even though more than ten (10) visits had elapsed.

34. The Respondent next treated Patient C on October 1, 1998 and noted the following charges: Procedures - Therapeutic Exercise (97110) (2

units), Neuromuscular Re-education (97112) and Therapeutic Activity (97530); and Tests - Range of Motion (95851).

35. The Respondent's documentation of the October 1, 1998 visit fails to support charging for two (2) units of Therapeutic Exercise, nor does it support charging under the Test code.

Patient D

36. Patient D, a female born in 1973, initially presented to Concentra on September 28, 1998 with complaints of lower back pain following a work-related incident.

37. Patient D was evaluated by the Respondent who included in the treatment plan daily physical therapy, moist heat, electrical stimulation, myofascial release, therapeutic activities and neuromuscular re-education.

38. The Respondent treated Patient D on September 29, 1998 and noted the following charges for that visit: Modalities - Hot/Cold Packs (97010) and Electrical Stimulation (97041); Procedures - Therapeutic Exercise (97110), Neuromuscular Re-education (97112), Myofascial Release (97250) and Therapeutic Activity (97530).

39. The Respondent's documentation of the September 29, 1998 visit fails to support charging under either the Therapeutic Activity or Neuromuscular Re-education codes.

40. The Respondent treated Patient D on September 30, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise

(97110) and Neuromuscular Re-education (97112); and Tests - Range of Motion (95851) and Jamar 1 (97750).

41. The Respondent's documentation of the September 30, 1998 visit fails to support charging under Neuromuscular Re-education code or the Test codes.

Patient E

42. Patient E, a female born in 1955, initially presented to Concentra on July 8, 1998 with an acute contusion of her right hand which she had sustained in a work-related incident. Patient E was examined by a Concentra physician and referred for physical therapy.

43. The Respondent treated Patient E on July 13, 1998 and noted the following charges: Tests - Manual Muscle - Hand (95832), Range of Motion (95851), Girth Measurements (97799) and Jamar 1 (97750).

44. The Respondent's documentation of the July 13, 1998 visits fails to support charging under the Test codes.

Patient F

45. Patient F, a female born in 1968, initially presented to Concentra on August 3, 1998, with a contusion of her right hand. Patient F was evaluated by a Concentra physician and referred for physical therapy.

46. The Respondent treated Patient F on August 5, 1998 and included in the treatment plan cold pack, therapeutic exercise and splinting.

47. A PTA treated Patient F on August 7, 1998 and noted the following charges: Procedures - Therapeutic Exercise (97110) and Tests - Range of

Motion (95851). The PTA's documentation fails to support charging under the Test code. In addition, the Respondent, by permitting the PTA to charge under the Test code and to make assessments of the patient's status, violated the Act by knowingly allowing the PTA to practice beyond the scope of the PTA's license.

48. The Respondent next treated Patient F on September 8, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) and Tests - Range of Motion (95851) and Jamar 1 (97750).

49. The Respondent's documentation fails to support charging under the Test codes.

Patient G

50. Patient G, a female born in 1980, initially presented to Concentra on October 5, 1998 after sustaining a contusion to her left hand while at work. The Respondent treated Patient G on October 5, 1998 and included in the treatment plan daily physical therapy, heat, electrical stimulation, therapeutic exercise, therapeutic activities and neuromuscular re-education.

51. A PTA treated Patient G on October 6 and October 8, 1998 and charged, *inter alia*, for Neuromuscular Re-education on both dates. The PTA's documentation failed to support charging under this code on either visit. In addition, on October 8, 1998, the PTA charged under the Jamar 1 code (97750).

52. The Respondent, by permitting the PTA to charge under the test code and to make assessments of the patient's status, violated the Act by knowingly allowing the PTA to practice beyond the scope of the PTA's license.

53. The Respondent next treated Patient G on October 12, 1998 and noted the following charges for the visit: Procedure - Therapeutic Exercise (97110) (2 units) and Neuromuscular Re-education (97112); and Tests - Jamar 1 (97750).

54. The Respondent's documentation fails to support charging for two (2) units of Therapeutic Exercise or charging under the Test code.

55. A PTA treated Patient G on October 14, 1998 and October 15, 1998 and included in his charges for those visits two (2) units of Therapeutic Exercise (97110).

56. The PTA's documentation fails to support charging for two (2) units on either visit. On October 14, 1998, the PTA added an exercise to Patient G's treatment plan. The record is devoid of documentation that the PTA communicated the addition to the Respondent and that the Respondent approved it.

57. The Respondent, by permitting the PTA to add an exercise to the patient's treatment plan, violated the Act by knowingly allowing the PTA to practice beyond the scope of the PTA's license.

The Respondent was interviewed by the Board during its investigation of this case. The Respondent stated, *inter alia*, that she charged under the test codes because she can not charge under the re-evaluation code. The Respondent's statements with regard to the charges for which she is alleged herein to have failed to have provided adequate documentation likewise fails to support the use of those codes.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated Md. Health Occ. Code Ann. §§ 13-316(5)(ii), (15), (16), (21), and (26). The Board also finds that the Respondent violated Code Md. Regs. tit. 10, § 38.03.02(K), and (L), and § 38.03.02-1.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of MAY, 2003, by a majority of a quorum of the Board,

ORDERED that the Respondent shall be placed on probation for a period of at least two (2) years, subject to the following conditions:

1. The Respondent shall pay a fine in the amount of three thousand dollars (\$ 3,000.00), to be paid prior to the termination of probation;
2. Within the first year of probation, the Respondent shall take the Board-approved law and ethics course and pass the associated examination administered by the Board;
3. The Respondent shall successfully complete a Board-approved documentation course. The Board agrees to waive this requirement if the Respondent submits to the Board in a timely manner documentation that she successfully completed in the recent past a documentation course that would constitute a Board-approved course;
4. The Respondent shall successfully complete a Board-approved billing course. The Board agrees to waive this requirement if the Respondent

submits to the Board in a timely manner documentation that she successfully completed in the recent past a billing course that would constitute a Board-approved course;

5. The Respondent may apply the above coursework to the Respondent's continuing education requirements for licensure renewal;

6. The Respondent shall prepare and present to the Board a suggested model policy and procedure for appropriate CPT coding and billing for possible presentation to Maryland Concentra Group offices;

AND IT IS FURTHER ORDERED that if the Respondent fails to comply with any of the terms or conditions of probation set forth above, that failure shall be deemed a violation of this Order; and it is further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of physical therapy in Maryland; and it is further

ORDERED that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity of a hearing, the Board may take further disciplinary action against the Respondent., including suspension or


revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order of Probation shall be upon the Respondent to demonstrate compliance with the Order or conditions; and it is further

ORDERED that the Respondent shall bear the expenses associated with the Consent Order; and it is further

ORDERED that, at the end of the probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on the Respondent's license, provided the Respondent can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and it is further

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't Code Ann. § 10-617(h) (Repl. Vol. 1999), this document consists of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank to which it is mandated to report.

5-20-03
Date


Penelope D. Lescher, M.A., P.T., M.C.S.P., Chair
State Board of Physical Therapy Examiners

CONSENT

I, Sheila Schaffer, P.T., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney and have been advised by my attorney of the legal implication of signing this Consent Order;
2. I am aware that without my consent, my license to practice physical therapy in this State cannot be limited except pursuant to the provisions of H.O. § 13-317 and the Maryland Administrative Procedure Act, codified at State Gov't §§ 10-219 *et seq.*
3. I am aware that I am entitled to a formal evidentiary hearing before the Board;
4. By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal.
5. I acknowledge that failing to abide by the condition set forth in this Order, I may, after an opportunity to be heard, suffer disciplinary action, including revocation of my license to practice physical therapy in the State of Maryland.

6. While I have consented and submitted to the foregoing Findings of Fact, Conclusions of Law and Order, I did not intentionally, knowingly or willfully submit a false statement to collect a fee.

7. I voluntarily sign this Consent Order after having an opportunity to consult with an attorney, without reservation, and I fully understand the language, meaning and terms of this Consent Order.

5-15-03
Date

Sheila Schaffer P.T.
Sheila Schaffer, P.T.
Respondent

STATE OF: MARYLAND

CITY/COUNTY OF: HOWARD

I HEREBY CERTIFY that on this 15 day of MAY, 2003, before me, a Notary of the State of MARYLAND and the City/County of HOWARD, personally appeared SHEILA SCHAFFER, P.T., and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed, and that the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.

[Signature]
Notary

My Commission expires: 12/18/06